

**To:** Mathieus, George[gemathieus@mt.gov]  
**From:** O'Connor, Darcy  
**Sent:** Thur 12/1/2016 2:54:45 PM  
**Subject:** RE: settlement proposal

Great! I'm hopefully flying out at 1:20 today, so I'll give you a holler on Friday.

D

**From:** Mathieus, George [mailto:gemathieus@mt.gov]  
**Sent:** Thursday, December 01, 2016 7:47 AM  
**To:** O'Connor, Darcy <oconnor.darcy@epa.gov>  
**Subject:** RE: settlement proposal

Hi Darcy, just listened to your voice mail.....I can chat today from 2-3 & 4-5, but you might be in the air.....I have all kinds of available time on Friday. Talk to you soon.

-George

**From:** O'Connor, Darcy [mailto:oconnor.darcy@epa.gov]  
**Sent:** Thursday, December 1, 2016 5:59 AM  
**To:** Mathieus, George  
**Subject:** FW: settlement proposal

Morning George! Per my voicemail, here is the offer we received yesterday. I'm in meetings this am until about 11:00 and then plan to head to the airport. I should have some time at the airport to talk if you're available. Let me know your schedule.

Thanks!  
D

**From:** Pinkston, Daniel (ENRD) [mailto:Daniel.Pinkston@usdoj.gov]  
**Sent:** Wednesday, November 30, 2016 9:28 AM  
**To:** Schroer, Lee <schroer.lee@epa.gov>; O'Connor, Darcy <oconnor.darcy@epa.gov>; Schmit,

Ayn <[Schmit.Ayn@epa.gov](mailto:Schmit.Ayn@epa.gov)>; Laidlaw, Tina <[Laidlaw.Tina@epa.gov](mailto:Laidlaw.Tina@epa.gov)>; Perkins, Erin <[Perkins.Erin@epa.gov](mailto:Perkins.Erin@epa.gov)>; Zomer, Jessica <[Zomer.Jessica@epa.gov](mailto:Zomer.Jessica@epa.gov)>; Hisel-McCoy, Sara <[Hisel-McCoy.Sara@epa.gov](mailto:Hisel-McCoy.Sara@epa.gov)>; Sutin, Elyana <[Sutin.Elyana@epa.gov](mailto:Sutin.Elyana@epa.gov)>

**Subject:** FW: settlement proposal

Colleagues:

Attached is a settlement proposal received from plaintiff a few minutes ago. I responded with an email indicating that I've passed it along to EPA and asking whether we can share it with Montana. I haven't heard back on that latter point.

Daniel (Dan) Pinkston

Senior Trial Attorney

Environmental Defense Section/USDOJ

303.844.1804, [daniel.pinkston@usdoj.gov](mailto:daniel.pinkston@usdoj.gov)

**From:** Janette Brimmer [<mailto:jbrimmer@earthjustice.org>]

**Sent:** Wednesday, November 30, 2016 9:14 AM

**To:** Pinkston, Daniel (ENRD) <[DPinkston@ENRD.USDOJ.GOV](mailto:DPinkston@ENRD.USDOJ.GOV)>

**Cc:** Albert F. Ettinger ([ettinger.albert@gmail.com](mailto:ettinger.albert@gmail.com)) <[ettinger.albert@gmail.com](mailto:ettinger.albert@gmail.com)>; Jennifer Chavez <[jchavez@earthjustice.org](mailto:jchavez@earthjustice.org)>; Katherine O'Brien <[kobrien@earthjustice.org](mailto:kobrien@earthjustice.org)>; Stephanie Tsosie <[stosie@earthjustice.org](mailto:stosie@earthjustice.org)>; Guy Alsentzer ([guy@uppermissouriwaterkeeper.org](mailto:guy@uppermissouriwaterkeeper.org)) <[guy@uppermissouriwaterkeeper.org](mailto:guy@uppermissouriwaterkeeper.org)>

**Subject:** settlement proposal

Dear Dan:

After our last telephone conference with EPA and the State of Montana representatives, we discussed the details of that call, the claims in this litigation, and what we thought would allow for settlement of plaintiff's claim in this litigation. The following is plaintiff's offer of settlement.

Plaintiffs will dismiss this litigation without prejudice if, as part of an enforceable consent decree, EPA agrees to the following:

1. The State of Montana will repeal and withdraw DEQ Circular 12-B and Montana ARM 17.30.660 and all standards based on Circular 12-B, by no later than June 1, 2017.
2. EPA will approve the repeal and withdrawal of DEQ Circular 12-B and Montana ARM 17.30.660 and all standards based on Circular 12-B by July 1, 2017 (if that is deemed necessary) or, if the State of Montana does not take action as provided in paragraph 1 by June 1, 2017, EPA will, no later than June 15, 2017, determine under 33 U.S.C. 1303(c)(4), that the standards under and/or based on DEQ Circular 12-B and Montana ARM 17.30.660 fail to protect designated uses, fail to conform to EPA requirements for water quality standards or variances, and propose repeal of the standards under and/or based on DEQ Circular 12-B and Montana ARM 17.30.660 by no later than July 1, 2017.
3. Any replacement language or other numeric nutrient standard or variance provision proposed by the State of Montana shall conform to EPA rules, including 40 C.F.R. 131.14. The public shall be afforded not less than 60 days notice and opportunity to comment on any replacement or other nutrient standards or variance provision proposed by the State of Montana within three years of the settlement.
4. That EPA review and assess any replacement provision or other variance provision in accordance with the requirements of EPA rules, including 40 C.F.R. pt. 131 and act within the 60 or 90 days required by the Clean Water Act and 40 C.F.R. 131.21(a) for approval or disapproval.

Let me know if you or EPA have questions. Thanks.

Janette Brimmer

Attorney

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